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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 06 2010

SRC 09 186 52896

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on June 3, 2009, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree.[1] At the time she filed the petition, the petitioner was a graduate student and research assistant in the Department of Biomedical Engineering at the New Jersey Institute of Technology (NJIT). The petitioner was also working as an "intern student" in the "Analytical Characterization group at Ethicon, a Johnson & Johnson company, in Somerville," New Jersey. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner argues that the benefits to the national interest from her future work "substantially outweigh the national interest in labor certification." For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--
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> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> > (B) Waiver of job offer.
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner received her Master of Science degree in Biomedical Engineering from the NJIT in 2004. The director found that the petitioner qualifies as a member of the professions holding an advanced

[1] At the time she filed the petition, the petitioner indicated that she was in the United States as an F-1 nonimmigrant student.

degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

We concur with the director's finding that the petitioner works in an area of intrinsic merit, biomaterials and orthopaedics, and that the proposed benefits of her work, research advancements in bone tissue engineering, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Along with documentation of her educational qualifications, work experience, symposium presentations, a patent application filed by her Ph.D. advisor, and an "article in press" she coauthored with her Ph.D. advisor which was submitted to *Acta Biomaterialia*, the petitioner submitted several letters of support.

[redacted] Department of Biomedical Engineering, NJIT, states:

> [The petitioner] is under my direct supervision for her Ph.D. work at New Jersey Institute of Technology. She has worked in my research group for more than three years, during which time she conducted outstanding research in the field of bone tissue engineering. . . . Within this field, [the petitioner] is currently researching on electrospun composite scaffold of polymer and bioceramics for bone tissue engineering.
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> [The petitioner's] work in this field is definitely unique, novel and extraordinary because she has made multiple important innovative contributions to the field of electrospun composites. Specifically, she successfully produced electrospun scaffolds with uniformly dispersed ceramic along the fibers. Uniform dispersion of the ceramic along the fiber is required for improving the integration between the polymer and ceramic and improving the mechanical properties of the composites. Electrospun scaffolds normally have very small pore size,

> which is not desired for the scaffolds used for bone tissue engineering. However, [the petitioner] was able to produce electrospun scaffolds with large pore sizes. A large pore size is highly desired for efficient new bone formation because it allows the migration of the cells into the scaffolds and revascularization, which would ultimately form a new bone. [The petitioner's] other major accomplishment is in identifying that solvents could affect the properties of the electrospun composites. She fabricated scaffolds with novel architecture having a bimodal distribution of fibers having nano-size fibers in between micron size fibers. This architecture has proved to be favorable for osteogenesis from her in-vitro cell studies results. In her in-vitro cell studies, she further found her scaffolds to be osteoinductive, inducing the differentiation of the mesenchymal stem cells to bone forming cells, which is a great achievement in the field of electrospun scaffolds for bone tissue engineering. [The petitioner] reported all these accomplishments in several presentations at conferences and a journal paper, which will soon be published. We are also in the process of filing a patent application for the novel architecture, osteoinductive scaffold fabrication process.

The petitioner submitted a copy of the United States Patent Application for "Electrospun Ceramic-Polymer Composite as a Scaffold for Tissue Repair" assigned to the NJIT. This document identifies [redacted] rather than the petitioner as the inventor of the process. Even if the petitioner were to demonstrate that she contributed significantly to this invention, an alien cannot secure a national interest waiver simply by demonstrating that he or she shares in a patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *NYSDOT*, 22 I&N Dec. at 221, n. 7. In this instance, there is no evidence showing that this innovation has been licensed or utilized with significant success in the medical field.

[redacted], Department of Biomedical Engineering and Chemistry, and Director of the Medical Device Concept Laboratory, NJIT, states:

> [The petitioner] was able to produce electrospun scaffolds with highest pore size reported to date. . . . [The petitioner's] study demonstrated that the solvent used in preparing the electrospun composite mats plays a critical role in determining fiber and pore dimension, which affect the new bone formation inside the body. Also, the scaffolds fabricated by [the petitioner] have a novel architecture with bimodal distribution of fibers having nano-size fibers in between micron size fibers. From her in-vitro cell studies results she found this architecture to be favorable for osteogenesis. She further found the scaffolds to be osteoinductive, inducing the differentiation of the mesenchymal stem cells to bone forming cells, which can be counted as a great accomplishment in the field of electrospun scaffolds for bone tissue engineering.
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> * * *
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> The scaffolds fabricated by [the petitioner] may represent the effective optimal solution for bone regeneration, making tissue engineering a realistic clinical alternative in the near future. The promise of combined advantages of the composite phases, as well as the inherent ease in optimization where desired material properties can be accentuated in a well-controlled

manner, have made [the petitioner's] research attractive for biomedical applications. Apart from that, [the petitioner] has done excellent work with the physical characterization using techniques like scanning electron microscope, differential scanning calorimetry, thermogravimetric analysis, powder X-ray diffraction, fourier transform infrared spectroscopy and Raman spectroscopy.

[redacted] does not provide specific examples of how the petitioner's research findings have influenced the field as a whole. With regard to [redacted] statement regarding the petitioner's utilization of physical characterization techniques, simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. [redacted] further states that the petitioner's "prolific research record is very impressive and presents a highly beneficial future for the U.S.," but there is no evidence showing that her work has been frequently cited by independent researchers or that it has otherwise significantly impacted her field.

[redacted], Department of Biomedical Engineering and Chemistry, and Director of the Medical Device Concept Laboratory, NJIT, states:

I have been closely associated with [the petitioner] and her laboratory research since she first entered graduate school as a Masters student. I closely co-advised the successful completion of her Masters degree on polymer electrospinning. I am very well aware of [the petitioner's] Ph.D. research because our laboratory (MDCL) very closely collaborates with the laboratory where she conducts her research; indeed, I am on [the petitioner's] thesis committee.

* * *

[The petitioner's] fabricated scaffolds have a great potential to be used for repairing craniofacial defects in particular and I am confident that her contributions would improve the current treatment methods.

[redacted] comments on what could one day result from the petitioner's work at the NJIT rather than providing specific examples of how her past research has already significantly impacted the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

[redacted] further states:

[The petitioner's] special combination of extensive knowledge in polymer processing, material characterization and in-vitro cell behavior makes her an extremely valuable specialist in the United States research community, and I believe that it would be difficult to find [sic] researcher with her special combination of skills who can conduct research in this specialized area of biomaterials and tissue engineering.

As previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

[redacted], Department of Analytical Characterization, [redacted], a Johnson & Johnson company in Somerville, New Jersey, states:

> At Ethicon, [the petitioner] is working on hydrolytic degradation studies of major biodegradable products – an emerging field. . . . [The petitioner] carries excellent experience from her Ph.D. work at NJIT, which she has been able to use here at Ethicon in advancing our studies of biodegradable polymeric materials.
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> [The petitioner] has made substantial contributions to the studies of in-vitro biodegradability of newly developed polymeric implant devices and also in improving the materials currently in research at Ethicon. . . . [The petitioner] is involved in conducting in-vitro degradation studies in accelerated hydrolytic conditions. With regards to this research, she has made multiple important contributions at Ethicon, particularly in advancing the understanding of degradation kinetics of Ethicon's major sutures using Arrhenius equation, which was used for predicting the degradation time of the sutures at patient's body temperature. Moreover, [the petitioner] has also written software for editing large amounts of data generated by the hydrolytic degradation studies performed at Ethicon. This contribution has allowed the company's research team to trim data filtration efforts from one hour to three minutes and has been definitely recognized as a major accomplishment to efficiently conduct hydrolytic degradation studies at Ethicon. Apart from that she has presented in several company R&D conferences highlighting her work at Ethicon and has also co-authored two papers which are in the process of being finalized.

While [redacted] indicates that the petitioner has contributed to ongoing research at Ethicon, Inc., he does not provide specific examples of how the petitioner's work for the company has influenced the field as whole.

[redacted] Department of Biochemistry and Molecular Genetics, University of Medicine and Dentistry of New Jersey – New Jersey Medical School, states:

> [The petitioner] was able to produce electrospun fibers that had uniformly dispersed ceramic along the fibers. The uniformly dispersed ceramic component produces a "bone-friendly" fiber that can be used to generate scaffolds for bone tissue engineering applications. Among the very few researchers working with this fabrication method, [the petitioner] easily stands out as one of the best. The electrospun scaffolds produced by [the petitioner] have a large pore size that assists in host cell migration into the scaffold, an important parameter in tissue engineering. Use of the composite, nano-size fibers enables [the petitioner] to produce scaffolds with novel architecture and scaled features (nanometer to micron) for customized applications. Her studies have shown that a combination of micro and nano fibers in the

> scaffold architecture is more favorable for new tissue formation. [The petitioner's] work also involves working with mesenchyamal stem cells, definitely an upcoming research area in the field of regenerative medicine. Stem cells have the potential to differentiate into various cell types like bone, cartilage and fat tissue. Through in-vitro experiments, she found that the scaffolds she fabricated induced mesenchymal stem cells to form bone, which is a significant achievement in the bone tissue engineering field. [The petitioner] presented these achievements at national and international conferences like the Society for Biomaterials (SFB) and the North East Bioengineering conference (NEBC) and her work has been submitted publication.

[redacted] expresses his opinion that the petitioner's "findings will contribute novel methods for bone repair." Similarly, [redacted] has opined that "[t]here will be tremendous advancement in the field of tissue engineering with the [the petitioner's] research." With regard to the witnesses of record, many of them express their future predictions regarding the impact of petitioner's work, rather than how her past research has already influenced the field as a whole. As previously discussed, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49.

[redacted]., New Jersey, states:

> [The petitioner's] contribution to the field of electrospun composite for bone tissue engineering is remarkable. She successfully fabricated the electrospun composites, extensively characterized them, and conducted in-vitro cell studies on the scaffolds, to find their potential to be used for in-vivo studies. Her work is extraordinary when compared to other researchers working in similar fields as a result of her ability to produce scaffolds with uniform dispersion of the ceramic along the fiber, which is a very significant achievement because ceramic, as an inorganic material, does not typically disperse well in polymers. Uniform dispersion of the ceramic along the fibers is required for the better integration between the ceramic and polymer. The uniqueness surrounding her results is that she was able to produce scaffolds with novel architecture displaying nano size fibers forming a web-like network in between micron size fibers. The in-vitro cell studies [the petitioner] conducted using mesenchymal stem cells showed that the novel architecture was osteoinductive, proving it to be very favorable for osteogenesis. Moreover, the scaffolds fabricated by [the petitioner] have the highest pore size reported to date in the field of electrospinning. Also, [the petitioner's] research demonstrated that the solvent used for electrospinning significantly affected the dispersion, fiber size, pore size, porosity, roughness, thermal, and mechanical properties of the electrospun composites . . . . All these achievements were presented in several conferences.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to

the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

The director requested further evidence that the petitioner had met the guidelines published in *NYSDOT*. In response, the petitioner two additional letters of support and an "Uncorrected Proof" of the article submitted to *Acta Biomaterialia* for publication.

[redacted] Department of Biomaterials and Biomimetics, New York University College of Dentistry, states:

> [The petitioner] successfully fabricated mechanically flexible composite scaffolds with a maximum concentration of bioactive ceramic that is still flexible, overcoming the limitations of brittle ceramics which are difficult to shape. The uniqueness about her scaffolds is the bimodal size distribution of their component fibers, which are in micron and nano-size ranges, representing architecture very beneficial for bone cells. She also produced large pore sized scaffolds, which are required for cell infiltration and bone tissue in-growth. Her scaffolds represent the highest pore size reported to date in the literature of electrospun scaffolds. Producing large pore sizes using this technique is in itself a great achievement because electrospinning process normally produces small pore sizes below the dimension of the size of a cell, resulting in poor cell infiltration and limited tissue in-growth in vivo. The significance of her work is that she achieved large pore size and bimodal fiber distribution with a very simple process, by varying the solvent used for spinning. Also, she obtained fibers with homogeneous dispersion of the ceramic, which is required for improved molecular interaction and mechanical properties. To achieve homogeneous dispersion is a significant accomplishment because ceramic being an inorganic material does not disperse well in polymers. . . . [The petitioner's] innovative study on the effect of solvent on the structure of electrospun composites has made a tremendous contribution to the field and is a very thorough body of work. These accomplishments will soon be published in the journal *Acta Biomaterialia* (accepted 07-20-09).

The research findings discussed by [redacted] were unpublished as of the petition's June 3, 2009 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this subsequently published article in this proceeding. Publishing a journal article after June 3, 2009 does not constitute evidence that the petitioner's work was already influential in the field as of that date.

[redacted]., Eatontown, New Jersey, states:

> [The petitioner's] work focuses on developing a scaffold addressing the issues that must be considered for the effective application of bioceramics in the field of tissue engineering such as the degree of bioresorption and the poor mechanical strength. She did a thorough characterization of the fabricated composites and a thorough investigation of the effect of solvent on the structure of electrospun composites in order to improve cell infiltration into

> the mesh by increasing pore size. Typical electrospun scaffolds have very small pore sizes, which are not suitable as scaffolds for bone tissue engineering. [The petitioner] successfully produced electrospun scaffolds with pore sizes large enough for the cells to migrate into the scaffolds for the bone in growth, which is required for a scaffold to be used for bone repair. The pore sizes she obtained are the highest reported to-date in case of electrospun scaffolds. [The petitioner] successfully fabricated electrospun fibrous composites with uniform fiber morphologies and ceramic dispersions. Uniform dispersion of the ceramic along the fiber helps improving the integration between the polymers and ceramic, where she was able to obtain big change in the glass transition values reported to date in case of electrospun composites. The uniqueness of her work is the bimodal distribution of fibers generating both large and fine porous structures, which are new contributions to the field. . . . [The petitioner] reported all these accomplishments in the journal paper which is accepted and will soon be published (*Acta Biomater* (2009), doi:10.1016/j.actbio.2009.07.028).

Even if we were to consider the petitioner's *Acta Biomaterialia* article in this proceeding, we note that publication in journals and in conference proceedings is inherent to scientific research.[2] For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's published and presented findings when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by her work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that her work has gone largely unnoticed by her field. In this case, there is no citation history or other evidence showing that her work has significantly influenced her field as a whole or otherwise sets her apart from other researchers in the field.

The director denied the petition stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director's decision noted a lack of evidence showing that the petitioner's work has been frequently cited to by others in her field.

On appeal, the petitioner states:

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[2] For "Biological Scientists," the Department of Labor's Occupational Outlook Handbook, 2010-11 Edition (accessed at http://www.bls.gov/oco/), states that a "solid record of published research is essential in obtaining a permanent position involving basic research." *See* http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm, accessed on April 23, 2010, copy incorporated into the record of proceeding. The handbook also provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm, accessed on April 23, 2010, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS's position that authorship of journal articles does not set the petitioner apart from others in her field; we must consider the research community's reaction to those articles.

> I do agree citations are the best way to judge the impact of the applicants work. However, officer should also consider the fact that it is not uncommon for a work not to be published immediately in spite of the work being publishable. In my case lack of citations is because my work is most recent when the NIW [national interest waiver] application was filed for it to be cited by others. Therefore, I appeal the officer to instead consider the comments of the experts in my field to judge the impact of my work.

We agree with the petitioner that citations are not the only means by which to show her impact on her field. Independent witness letters can play a significant role in this respect. Here, however, the petitioner has submitted only a few such letters, which collectively fail to establish the depth or extent of her influence on the field.[3] Simply listing her research findings cannot suffice in this regard, because all doctoral students and biomedical researchers are arguably expected to produce original work.

With further regard to the letters of support, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from individuals selected by the petitioner is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). In this case, the content of the reference letters submitted by the petitioner does not establish that her work at the time of filing had already had a significant national impact or otherwise influenced her field as a whole.

While petitioner has contributed to research projects at [redacted], she has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest.

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[3] Aside from the letter of support from [redacted] of the New York University College of Dentistry, all of the reference letters submitted by the petitioner are from individuals who work in New Jersey. Such a limited geographic distribution of witnesses does not establish the petitioner's national impact in the United States or her influence over the field as a whole.

Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.